

*United States Court of Appeals
for the Second Circuit*



APPELLEE'S BRIEF

76-6122

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United States Court of Appeals
FOR THE SECOND CIRCUIT

SECRETARY OF THE INTERIOR, *et al.*,

Defendants-Appellants,

v.

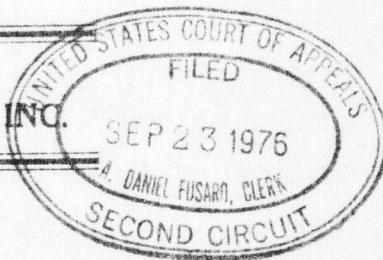
RIS

COUNTY OF SUFFOLK, *et al.*,

Plaintiffs-Appellees.

On Appeal from the United States District Court
for the Eastern District of New York

BRIEF FOR APPELLEE
CONCERNED CITIZENS OF MONTAUK, INC.



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September 23, 1976

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BRIEF OF PLAINTIFF-APPELLEE
CONCERNED CITIZENS OF MONTAUK, INC.

Introduction

This brief is submitted by Plaintiff-Appellee Concerned Citizens of Montauk, Inc. (hereinafter "Concerned Citizens") in answer to the briefs filed by the Federal Appellants and National Ocean Industries Association (hereinafter "NOIA").

Assuming that there is oil in the OCS Sale #40 area, and assuming that the oil can be drawn from the ocean depths to the off-shore platforms, the key problem in Appellants' position is that they still do not know how the oil is to be brought ashore - whether by pipeline or tanker. The Federal Appellants admit that of "all the conceivable issues arising from the Mid-Atlantic and gas lease sale" this issue "is the one least susceptible to prediction and analysis now." (Fed. App't Brf. p. 14).

This issue must be faced now, because the environmental and economic impacts differ fundamentally dependent on how the oil is brought ashore. If it is not known whether the oil is to be piped or tankered ashore, then both alternatives must be fully considered and analysed.

Tacitly admitting that the tanker alternative has not been adequately analysed, the Federal Appellants seek to substitute "an assumption, or more accurately a hope, in the EIS that pipelines will be used" (Fed. App't Brief, p. 17) and argue that it "would be environmentally irrational and against (the states) own self-interest to refuse to accept pipelines..." (Fed. App't Brief, p. 21).

Congress did not intend, and this Court should not permit, a major Federal action posing grave environmental risks to go ahead on either the mere "assumption" or "hope" of the agency proposing the action, nor on argument by counsel as to what would or would not be "irrational" state action. NEPA requires that the facts bearing on the issue be fully and fairly placed before the Secretary of Interior for his serious consideration. This was not done here. The District Court should therefore be affirmed.

Counter-Statement of the Issue

Appellants have truncated the issue on appeal in terms of error and/or abuse of discretion by the District Court in rejecting the Sale 40 EIS for its deficient discussion of land use controls and the impact of such controls on the environment. While this is part of the issue presented for review, the total issue squarely framed is:

In view of the facts that (i) OCS Sale #40 oil must be either piped or tankered ashore, (ii) both methods are environmentally risky but tankering raises the far more serious risks, and (iii) the coastal states have the sole power to prohibit pipeline entry, have the Federal Defendants violated NEPA* in,

(a) assuming without a "systematic interdisciplinary approach" [42 USC §4332(A)] that the oil will be piped

* National Environmental Policy Act, 42 USC §4332

ashore in the absence of any showing that the coastal states will allow pipeline entry,

(b) failing to provide a "detailed statement... on the environmental impact" [42 USC §4332] of tankering the oil ashore on the unsupported assumption that it would be piped ashore, and

(c) omitting a "detailed statement... of alternatives" (ibid) re tankering oil ashore and the resulting environmental cost-benefit impacts if coastal states prohibit pipeline entry.

Statement of the Case

Concerned Citizens^{1/} agrees with the statements presented in the appellants' briefs to the extent that they describe the nature of the case, the course of proceedings and its disposition in the Court below. However, with respect to facts relevant to the issues presented for review, we disagree with appellants' belabored discussion of facts (some of which are still in issue) which have little or no bearing^{2/} on the appeal issues.

1/ Concerned Citizens was permitted to intervene as Co-plaintiff by the District Court on Aug. 13, 1975. Concerned Citizens is an environmental organization of about 900 members who reside in or own property in Montauk, New York. The purpose of the organization is to preserve and protect the environment in and about Montauk. The Montauk area being a tourist, and commercial and sport fishing center is particularly vulnerable to the environmental impacts of the proposed program, i.e., "the Northeast Atlantic fisheries... (b)eaautiful swimming and boating areas... (and) scarce wetlands", referred to by the District Court (A16--A17).

2/ For example, Federal Appellants reference at pages 9-10 of their brief to bid amounts of 3.5 billion dollars, bid acceptances of 1.28 billion dollars and royalties of 16-2/3% and 33-1/3% to themselves are totally irrelevant to the appeal issues. NEPA was not intended to exempt profit-making operations from its purview. The haste with which appellants have proceeded despite this Court's warning at the Aug. 16th hearing of possible rescission only underscores the zeal with which appellants have pushed this program.

As the District Court held, its function (and it is respectfully submitted, the function of this Court) is "only to determine whether the proposed action of the Secretary of the Interior (Secretary) violates federal law, not whether it is wise." (A-18) Limiting discussion to this issue, Concerned Citizens submits that there are four controlling facts found by the District Court, none of which is "clearly erroneous" under Rule 52(a) F.R.Civ.P. These controlling facts are:

1. Oil brought ashore from the OCS Sale 40 area either by pipeline or tanker raises substantial environmental risks to the Mid-Atlantic Coastal states, but the risks from tankering are far more serious than from piping it ashore.

2. The coastal states have the power to restrict or prohibit outright the piping of oil ashore and thereby cause the oil to be tankered ashore.

3. The Federal Appellants did not adequately consider, and the EIS therefore does not adequately discuss, the power of the states to prohibit or restrict piping the oil ashore and thereby basically alter the cost-benefit analysis and probable environmental impacts of the proposed action.

4. The Sale 40 EIS is premised on the assumption that the oil will be piped ashore and thereby fails to adequately discuss the cost-benefit analysis and far more serious environmental impacts (and possible alternatives in view of such impacts) from tankering the oil ashore if coastal states prohibit or restrict its being piped ashore.

a) Greater Environmental Risks from Tankering
vs. Piping the Oil Ashore

As to the environmental impacts from the proposed program (regardless of whether the oil is piped or tankered ashore) the District Court found:

"The environmental implications of production of off-shore oil are substantial. For example, the Northeast Atlantic fisheries, under effective management, can produce about 1 billion dollars worth of food and other products each year; oil spills and other pollution associated with drilling may affect the spawning and life cycles of the prevalent species. Beautiful swimming and boating areas used by millions of people may be impacted by oil spills. Recent closing of beaches on Long Island because of pollution has sharply reinforced our appreciation of the costs in millions of dollars and loss of pleasure that such pollution may entail." (A16-A17)

and further found:

"Because of the barrier islands like Fire Island lying along the Northeast coast, bays like Great South Bay in Long Island, deep wetlands and beaches such as those in New Jersey's Cap May County and huge estuaries with their many bays and inlets such as those leading from the Baltimore and Hudson canyons in the OCS, the area involved is of enormous size and importance. Millions of people reside, work and play within its bounds; much of the nurseries of the Atlantic fisheries are located there; its destruction or serious damaging would result in loss of economic and aesthetic values at least comparable to the value of the Atlantic OCS hydrocarbon resources." (A16-A17)

Regarding the impact from pipeline entry, the District Court found:

"Uncontroverted evidence indicated that a million barrel spill was possible before automatic shut-off equipment took effect." (A-65) (Ref. Milgram A223-A225).

The Court found that risks from tankering are still greater, referring to the "increased possibilities of pollution through tanker accidents" (A18), and to the fact that the pipelines vs. tankers

decision "could affect the probability of environmental damage by many orders of magnitude...." (A28).

Appellants do not dispute the fact that tankering the oil ashore raises more serious risks than pipeline entry. The Federal Appellants say that "pipelines are considered to be environmentally desirable" (Fed. App'ts. Brief, p. 14). In accord, appellant NOIA describes the pipeline/tankers comparison in terms of "... the environmentally-less desirable tankers" (NOIA Brf. p.4) and refers to pipelines as having, "environmentally superior characteristics (as compared with tankers)" and therefore "should be utilized" (NOIA Brf., p. 34).

Accordingly there is no dispute about the fact that both tankering and piping of oil ashore raise substantial environmental risks, and that tankering raises the far more serious risks.

b) Coastal States Powers to Restrict/Prohibit Pipeline Entry

The District Court found that

"... the states can prevent construction on land and in the three-mile area extending out to sea, the use of pipelines can be blocked or their location controlled...." (A-18)

The support for this holding is thoroughly reviewed by the Court (A44-A64, A73-A76).

These state powers include outright prohibition, as well as controls on locations,

"Even if the states do not prohibit oil pipelines, they may restrict their point of entry, requiring a landfall, for example, at the industrialized northern section of the New Jersey Coast or at the refinery areas in the tristate New Jersey-Delaware-Pennsylvania region. Such a decision would require a reconsideration of whether tracts other than those proposed in

Sale 40 should be leased. It might, for example, improve the revenue from lease sales, decrease pipeline lengths, and reduce environmental impacts if tracts nearer the allowable pipeline landfalls were utilized in this first leasing" (A76-A77)

Appellants do not dispute these powers of the states, but argue without record support that no states would exercise them. (Fed. App't Brf., p. 21; NOIA Brf., 54, 55) Absent a clear showing in the EIS to this effect, the existence of these state powers is an environmental and cost-benefit factor bearing directly on impacts and alternatives in the NEPA review of this program, which was not adequately considered as is shown in the following section.

c) Inadequate Consideration of States Powers to Alter the Cost-Benefit Analysis and Environmental Impacts of the Proposed Action

The District Court found:

"There is one major area... where the Secretary's decision was based on insufficient analysis of environmental damages. The impact of possible state decisions affecting such matters as whether pipelines or tankers will need to be used and where on-shore facilities can be located is inadequately covered. This factor could affect the probability of environmental damage by many orders of magnitude and should not have been virtually ignored." (A-28)

The District Court in discussing the Coastal Zone Management Act ("CZMA") found that under the Act the Secretary "must cooperate with the states in controlling exploitation of OCS energy resources." (A50). The 1976 CZMA Amendment "insures against coercion by the Secretary and guarantees the states' independence." (A-52). The Court quoted the congressional Conference Report in holding,

"A chief purpose of the 1976 Amendments is to 'improve and strengthen (states) coastal zone management'... the discretion of the Secretary of Commerce and other Federal officials should be correspondingly limited." (A-55)

Although the District Court concluded that the CZMA did not require Appellants to forego leasing, this did not end the inquiry but rather led to the question,

"... whether the possibility of the states taking action before or after the Management Plans become effective make the environmental assumptions of the Secretary set out in the Sale No. 40 ERIS invalid. ... The issue is whether these independent powers of sovereign states to control their own lands to prevent certain uses by private oil companies can so frustrate federal administrators' assumptions that they must be considered under NEPA." (A-64)

Recognizing that the EIS "does mention in passing the possibility" of states' denial of pipeline right of ways, the Court nevertheless found,

"... the total discussion makes it clear that the states have no effective power to prevent the oil and gas lines going where the federal government wants them to. It also assumes that the use of pipelines is both economically and technically feasible in case of a large oil discovery -- the assumption made in considering all environmental impacts." (A 71)

* * * *

"... there was no discussion and apparently no real awareness of the fact that state laws may severely restrict pipelines and related on-shore facilities." (A72-A73).

And in view of this, the Court found:

"Without more coordination between the states and the federal government it is impossible to predict with accuracy the impact OCS development will have on the seashore. Certainly the information the Secretary had at the time of his decision to proceed with Sale No. 40 did not permit a sound judgment as to what the five states effected by the Sale would sanction." (A65 - A66).

This fact is admitted by Federal Appellants in characterizing this issue as

"... the one least susceptible to prediction and analysis now." (Fed. Appts' Brf., p. 14)

Appellant NOIA basically agrees that the answers on this issue "cannot now be known" (NOIA Brf., p. 40)

The answers if ascertainable on this question of state control over pipeline vs. tanker should have been in the EIS. If they were not ascertainable as of the writing of the EIS, then pipeline and tanker entry should have been treated as alternatives, and the economic/environmental impacts of each alternative fully analysed in the EIS.

d) Assumption of Pipeline Entry Basic to EIS Analyses

The District Court found,

"The feasibility of pipelines for the transportation of oil has been a cornerstone of Mid-Atlantic OCS planning." (A 65).

"... the NEPA documents and the PDOD's have all proceeded on the assumption that OCS oil would be transported by pipeline in a case of a major strike since the probability of spills is so much less by pipeline than by tankers." (A 66).

The Court supports these findings by references to Congressional hearings reports, the PDOD's, and the EIS (A65-A70).

Appellants do not deny that the NEPA review has proceeded on this assumption.

"We agree that there is an assumption, or more accurately a hope, in the EIS that pipelines will be used to transport the oil." (Fed. App't Brf. p. 17)

Hence there is no dispute as to the fact the EIS is premised on this basic assumption of pipeline entry of the oil notwithstanding

the states clear power to prohibit such entry, and notwithstanding the far more serious environmental risks which would result from tankering if this program goes ahead as now proposed.

The facts set forth above were found by the District Court after an eleven day hearing, 2,645 transcript pages of expert testimony, and 180 exhibits - after "full discovery [and] full trial" (NOIA Brf. 21). The Court thoroughly reviewed the "almost too detailed and encyclopedic" EIS (A40). It is impossible to convey within the time and page limitation of an appeal all that transpired below. Under these circumstances the District Court's findings are entitled to strict application of the "clearly erroneous" rule [Rule 52(a), F.R.Civ.P.] and should therefore not be disturbed on appeal.

A R G U M E N T

THE DISTRICT COURT CORRECTLY CONCLUDED THAT THE EIS FOR
OCS SALE #40 DID NOT MEET THE REQUIREMENT OF NEPA

Upon finding the facts set forth above the District Court concluded:

"Without an analysis of these state provisions and of the probable extent of state cooperation or opposition, a realistic appraisal of the impact of Sale 40 on environment is not possible. No meaningful discussion of this vital dimension of the environmental problem is contained in the final EIS OCS Sale No. 40 or the PDOD. ... This failure, even though it did not constitute a violation of the Management Act, did violate NEPA." (A76)

* * * * *

"If the assumption by the Secretary that pipelines will transport the oil in case of a large strike would have been different had the state situation been brought home to him, then the entire NEPA decision-making process is invalidated. Misplaced reliance on such a material proposition raises a question as to the adequacy of the NEPA documents and the reliability of the Secretary's decision." (A77)

In so concluding the Court correctly relied on Monroe County Conservation Council, Inc. v. Volpe, 472 F2d 693,697 (2d Cir 1972) to the effect that NEPA is "at the very least 'an environmental full disclosure law,'" and NRDC v. Callaway, 524 F2d 79,88 (2d Cir 1975).

Furthermore, in Callaway this Court held:

"It is absolutely essential to the NEPA process that the decisionmaker be provided with a detailed and careful analysis of the relative environmental merits and demerits of the proposed action and possible alternatives, a requirement that we have characterized as 'the lynchpin of the entire impact statement', In addition, the discussion of

alternatives should be presented in a straight-forward, compact and comprehensive manner 'capable of being understood by the reader without the need for undue cross reference.' CEQ Guidelines, 40 C.F.R. §1500.9(b)." (524 F2d 92,93)

Measured against this standard, there can be no question that the OCS Sale 40 EIS discussion of the tanker alternative is woefully inadequate.

A. Appellants' Arguments on Irrationality of States Prohibition of Pipeline Entry

Federal appellants argue that it would be

"... environmentally irrational and against their own self-interest (for the states) to refuse to accept pipelines before it is determined if and where pipeline landfalls might exist,"

and in the same breath that,

"the District Court reaches the absurd conclusion that pipeline location might dictate selection of tracts other than those proposed in Sale 40!"
(Fed. App't. Brf. p. 21)

The Federal Appellants would thus force a Hobson's choice on the states, i.e., State governments should not complain until the Federal government specifies the tracts (and pipeline corridors), but then it is too late to complain about the selection of those tracts (and corridors).

The fallacy of Appellants' position is aptly illustrated by the New York Times article of September 21, 1976 reporting on the problems facing the Federal Government on the Alaska oil program. A copy of the article is annexed hereto as Exhibit A*. California

*This article is not in evidence, and not offered for the truth of any statements therein reported. It is submitted merely to illustrate one type of problem recognized by the District Court's decision. Submission is made under F. Evid. Rule 201.

State officials reportedly are refusing to accept Alaska oil in California ports. This is reportedly causing the Federal Government to now consider the economic (and hopefully the environmental) costs of shipping via the Panama Canal, around the Cape Horn, and by a tanker/pipeline combination.

A similar situation could occur in the Mid-Atlantic area. As the Federal Appellants admit:

"The issue (pipeline entry) is essentially a political issue that will depend upon the vagaries of local political pressures and local decision-making. It will likely be a contest between environmentalists and labor unions or local business groups as to whether the state or locality should accept OCS oil and gas pipelines and related industrial development The results of such an obviously political contest cannot, at this point, be predicted." (Fed. App't. Brf. p. 14)

Appellants therefore cannot dismiss the States possible prohibition of pipeline entry as "irrational" (Fed. App't. Brf. p.13), "straining credulity ... short-sighted ... extremely parochial" (NOIA Brf., pp.54,55). The fact is that the State of New York, the Counties of Nassau and Suffolk, six towns, and two environmental groups are opposing the program as now proposed whether carried out by pipeline or by tanker. There is no reason to assume that powers to prevent pipeline entry would not be used to carry on this opposition.*

* As of this date The Wall Street Journal reports that Congress approved a bill which "strengthens environmental standards for drilling (and) gives states more say" in off-shore drilling (Ref. annexed Exhibit B). This bill would increase the likelihood of state restrictions on pipelines.

B. The "Crystal Ball" - Rule of
Reason Cases Do Not Conflict
With the NEPA Full Disclosure Rule

Appellants appear to argue that the "crystal ball" - rule of reason cases somehow limit the full disclosure requirement of NEPA. More specifically, appellant NOIA complains,

"Judge Weinstein... completely ignored the rule of reason. Instead, he stated that NEPA was 'an environmental full disclosure law' (NOIA Brf., p. 39).

Clearly Judge Weinstein was on sound ground in view of Monroe, supra, which holds that NEPA is "at the very least" a full disclosure law.

It is equally clear on the basis of the Callaway decision, supra, that the "crystal ball" - rule of reason cases do not conflict with the NEPA full disclosure rule. In Callaway the Navy argued that other dumping projects were "tentative and speculative" and that therefore the subject New London project "may be considered in isolation" (524 F.2d, at 87). This Court agreed with the Navy that NEPA does not require a "crystal ball" inquiry, but nevertheless held,

"The fact that another proposal has not yet been finally approved, adopted or funded does not foreclose it from consideration, since experience may demonstrate that its adoption and implementation is extremely likely. (524 F.2d, at 88).

Likewise here, the Federal Appellants would have the EIS reviewed on the pipeline entry impacts in isolation on the assumption that tanker entry is tentative and speculative. But as the District Court found, the States may void this assumption by exercising their coastal control powers. The fact that they

have not yet "finally approved, adopted or funded" a plan for doing so "does not foreclose it from consideration." (Ibid) (Indeed, the states cannot do so at this time, because the pipeline entry points are not yet known.)

This Court in the Callaway decision, supra, rejected the rule of reason as a basis of the district court decision (524 F.2d at p. 92) cautioning against too lenient an application of the rule as follows:

"Otherwise application of a 'rule of reason' would convert an EIS into a mere rubber stamp for post hoc rationalization of decisions already made." (524 F.2d at p. 95)

No "crystal ball", nor any unreasonable inquiry, was required of the Federal Appellants in order recognize and analyse a potentially serious Federal-State conflict over pipeline entry of the oil from OCS Sale 40. New York State alerted the Federal appellants to the problem in its comments of Feb. 20, 1976, (Fed. App't Brf., p. 20). The 1976 CZMA amendments likewise raised the question as discussed above at pp. 8-9.

Instead of squarely addressing the problem, the EIS makes scattered brief references to tanker pollution problems, and likewise scattered references in other sections of the EIS "in passing" to the possible denial of pipeline rights of way (A 71). The two are not brought together, and their total impact is not considered anywhere in the EIS.

C. The Sales Should
Be Rescinded

The District Court concluded that plaintiffs were entitled to injunctive relief in view of the likelihood of success on the merits and of irreparable harm absent an injunction (A83-A85).

The Court in so concluding found:

"The damage, if any, to the federal government from a preliminary injunction would be slight. All expert opinion is agreed that in the foreseeable future the value of hydrocarbons on the OCS can only increase. ...Most expert opinion on the lead time between exploration and production estimates that there will be three years of exploration at a minimum before production activity can begin. ...As the final EIS OCS Sale No. 40 puts it:

'development activities would not commence until at least three years after active exploratory drilling has started. This timeframe, as presently proposed, would indicate that development activities would probably not commence until sometime in 1979 at the earliest.'

Vol. III, p. 61. See also Vol. II, pp. 517. (A85-A86)

and further that:

"Loss of possible profits by the individual defendants is not enough to warrant denial of NEPA relief. If the Secretary decides, after further review, to proceed, expenditures by National Ocean Industries Association members to prepare for bidding on the leases will be largely recouped." (A86).

These findings have not been challenged by appellants.

They are still valid despite the intervening sale of August 17, 1976. Rescission of the sale will cause no greater hardship, than barring of the sale. In any event, this Court made clear to the parties at the hearing of August 16th that the sale would be subject to rescission. Rescission of the sale is therefore proper.

With regard to any suggestion by appellants that the program be permitted to go forward pending further environmental evaluation and subject to suspension dependent on such evaluation, the following holding of this Court in Callaway, supra, applies fully:

"The trouble with this suggestion is that it offers 'too little and too late' to enable the EIS to be of any effective use." (524 F. 2d at 90)

If Plaintiff-Appellees are ever to obtain effective relief against this off-shore oil dreadnought, that relief must be granted now.

CONCLUSION

Accordingly, Plaintiff-Appellee Concerned Citizens of Montauk urges that the decision of the District Court be affirmed, and that the OCS #40 Sale be rescinded.

Respectfully submitted,

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25 cents beyond 50-mile zone from New
except Long Island. Higher in air de-

California Snubs Alaska Oil, Forcing U.S. to Reconsider

By EDWARD COWAN

Special to The New York Times

SACRAMENTO, Calif. — Unexpected opposition by the State of California to the delivery by tankers of Alaskan oil to a terminal near Los Angeles has forced Washington to reconsider basic assumptions concerning the long-awaited Alaska pipeline.

Environmental issues and also economic fundamentals, such as a projected West Coast oil surplus, have led Washington to consider whether United States oil from Alaska's Prudhoe Bay should be sent to Japan, rather than to California, or perhaps shipped via a permanent supply route through the Panama Canal to American refineries on the Gulf of Mexico and the East Coast.

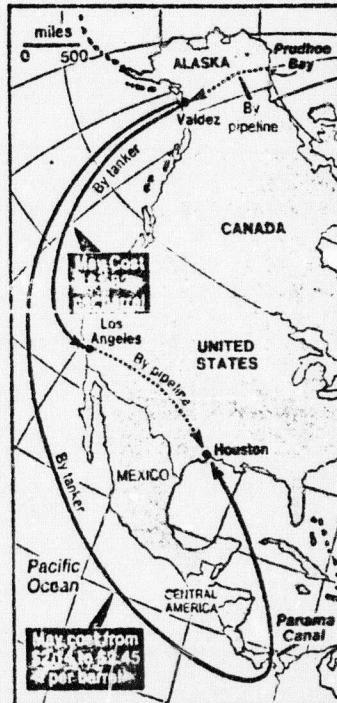
California's position has stunned Washington inasmuch as there was no hint of it in the long bitter debate that preceded approval by Congress three years ago of the Alaska pipeline, a project the Government has counted on to diminish American dependence on foreign oil.

The issue concerns the so-called West Coast "surplus," that fraction of the North Slope oil, now apparently more than half, that could not be used by West Coast refineries.

The Standard Oil Company (Ohio), which has the largest single interest in Prudhoe Bay's proven reserves of 9.6 billion barrels, wants to unload the oil at Long Beach, Calif., for pipeline relay to Texas and then onto refineries on the Gulf Coast and in the Middle West.

The Federal Energy Administration, although officially uncommitted, leans toward the Sohio proposal. California, however, contends that unloading 1.2 million barrels a day in 1977 and up to 1.6 million by 1980 could add hydrocarbons to the already dirty air of southern California.

Meanwhile, the unfolding Federal-state



The New York Times/Sept. 21, 1976

Delivery costs of oil from Alaska to refineries in Houston would vary by route taken, according to study by Federal Energy Administration.

dispute over oil and the environment has taken on partisan overtones. Associates of Governor Edmund G. Brown Jr., a prominent Democrat who vied for his party's Presidential nomination earlier this year, have said Washington sees the problem too much through Sohio's lens. Tom Quinn, chairman of the state's Air Resources Board and a political ally of

Continued on Page 51, Column 1

EXHIBIT A

REST COPY AVAILABLE

California Snub On Alaskan Oil Forces Restudy

Continued From Page 1

Governor Brown, has presented the state's views in person and by letter to the Federal Energy Administrator, Frank G. Zarb.

Richard Maulin, chairman of the California Energy Commission, has suggested by letter to the Senate Interior Committee that exporting Alaskan oil to Japan "should be more carefully and objectively evaluated with respect to overall national economic costs and benefits before being prematurely rejected for ill-defined and questionable national security reasons."

Sohio has suggested that Prudhoe Bay oil could be exported to Japan as a "swap" for Persian Gulf oil that would be diverted from Japan to United States refineries. Essentially, such a swap would be an export in the usual sense, except for some small cost reduction that the American refineries presumably would realize and might possibly share with consumers.

Exportation of the oil or a swap, rather than delivery through California, would mean North Slope oil would not diminish United States dependence on imports of foreign oil, now running at more than six million barrels a day.

Transport to Be Available

American-flag tankers for temporary shipment of up to 250,000 barrels a day through the Panama Canal are expected to be available for 1978-79, pending completion of an overland pipeline from Long Beach. An additional 100,000 to 400,000 barrels a day may be exported or moved to American refineries by some other means, perhaps by foreign ships.

The Federal Energy Administration, in a yet-unpublished study, calculates the following delivery costs from Valdez, Alaska, to Houston refineries:

• By tanker and by pipeline from Los Angeles, \$1.82 a barrel.

• By tanker through the Panama Canal, \$2.14 to \$2.45, depending on ship size.

• By very large crude carriers around Cape Horn, \$2.65.

Also pending are proposals to build pipelines to deliver crude oil to "Northern tier" refineries in Minnesota, Wisconsin and Michigan. Crude oil supplies from Canada are to be cut back to zero by 1982. Lines from Kitimat, British Columbia, or Port Angeles, Wash., have been proposed, but it appears that neither would absorb the entire West Coast surplus of North Slope oil.

Because of its environmental, economic and political ramifications, the dispute shapes up as a lively postscript to the long debate that culminated in passage



The Em Kayen Magazine

Construction at Valdez, Alaska, the southern terminal of the pipeline that will carry oil from the North Slope

of the 1973 law that authorized an oil pipeline from Prudhoe Bay to Valdez.

Although described as 80 percent complete, that 800-mile pipeline may be unable to start carrying oil on schedule late next year because of unresolved safety problems and possible delays in terminal construction.

Congress authorized the pipeline after being told by the Administration and the oil industry that Prudhoe Bay oil would be consumed on the West Coast. Now, it appears that there will be a large West Coast surplus of up to 800,000 barrels a day by 1980, and more later as production rises to 1.6 million barrels a day.

Senate Hearings Due Today

According to the industry and the Administration, the surplus results from the big 1973 jump in oil prices and the resulting slowdown in the growth of consumption, plus the start in July 1976 of commercial production at the Elk Hills Naval Petroleum Reserve in California.

The Senate Interior Committee is expected to hold hearings today on the whole issue.

Sohio plans to build a 200-mile pipeline across California to join with an 800-mile El Paso Natural Gas Company line from the Arizona border to Midland, Tex. El Paso has applied to the Federal Power Commission for permission to stop its intermittent use of the line in order to lease it to Sohio. The energy agency is expected to support the application, California is expected to oppose it.

California officials contend that Washington does not appreciate the severity of the air-pollution problem in southern California and that Federal energy officials are too sympathetic to Sohio.

Introducing a partisan note, Eli Chernow, a special assistant to Governor Brown, said in an interview: "It's hard to believe that Jimmy Carter would be as sympathetic to every claim of the oil companies as the Federal Energy Admin-

istration and the Interior Department have been. Sohio asserts its interest. The F.E.A. seems to accept that as in the national interest without questioning whether the national interest might call for something else."

Mr. Zarb, the F.E.A.'s head, retorted: "I represent the agency, and I say that's nonsense."

Quoting Democratic Assemblyman Charles Warren, Mr. Chernow said:

"What we have here is essentially a marketing problem for one company," Sohio.

Mr. Zarb said that in a July 29 meeting with Mr. Chernow and Mr. Quinn, the chairman of the Air Resources Board, he told them "I was going to keep my mind open." Mr. Zarb also said that his agency's draft report on the problem would

be sent to California and other states for discussion."

The California officials have said they could not license unloading of big tankers from Alaska unless Washington wrote regulations adequate to protect the South Coast Air Basin.

That might be feasible, Mr. Zarb said. "If their requirements are rational and reasonable, I want to see specifically what they are."

Federal officials say California's professed fears may be the opening gambit in a state-Federal negotiation to get more natural gas for California, either from existing fields in Texas and New Mexico or from a possible overland natural gas pipeline from Prudhoe Bay.

Kleppe Will Advise Ford To Veto Offshore Oil Bill

By G WALL STREET JOURNAL Staff Reporter

WASHINGTON — Interior Secretary Thomas Kleppe said he would recommend that President Ford veto a pending bill governing offshore oil and gas drilling unless it is changed.

House-Senate conferees approved the bill earlier this week. Mr. Kleppe said planned offshore oil drilling would be slowed by two to four years if the legislation is passed.

The bill revamps bidding procedures to yield the federal government more money in the leasing of offshore tracts, strengthens environmental standards for drilling, gives states more say in federal drilling plans and allows the Interior Department to contract for exploratory drilling to get more information about proposed development areas prior to leasing.

EXHIBIT B

U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

SEC OF THE INTERIOR

VS

CT OF SUFFOLK

State of New York, County of New York, ss.:

HAROLD DUDASH
agent for William F. Dudine, jr
appellee
for the above named
21 years of age, is not a party to the action and resides at 2346 Holland avenue, BX, NY

, being duly sworn deposes and says that he is
the attorney
herein. That he is over

That on the 23 day of sept, 1976, 19 , he served the within brief for appellees
concerned Citizens of Montauk inc

upon the attorneys for the parties and at the addresses as specified below
those parties are set forth on page two of this affidavit

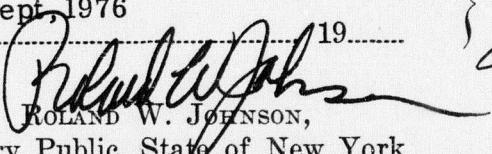
by depositing two copies

to each of the same securely enclosed in a post-paid wrapper in the Post Office regularly maintained by the United States Government at

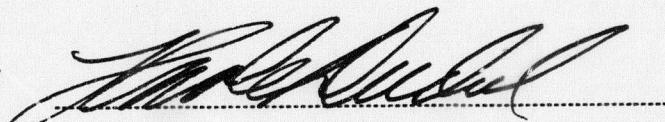
90 Church Street, New York, New York

directed to the said attorneys for the parties as listed above at the addresses aforementioned, that being the addresses within the state designated by them for that purpose, or the places where they then kept offices between which places there then was and now is a regular communication by mail.

Sworn to before me, this 23
day of sept, 1976


ROLAND W. JOHNSON,
Notary Public, State of New York
No. 4509705

Qualified in Delaware County
Commission Expires March 30, 1977



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